

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

vs.

5:11-CR-602

JOSEPH VINCENT JENKINS,

Defendant.

-----X

Transcript of a Final Pretrial Conference  
held on January 21, 2014, at the James Hanley  
Federal Building, 100 South Clinton Street,  
Syracuse, New York, the HONORABLE GLENN T. SUDDABY,  
United States District Judge, Presiding.

A P P E A R A N C E S

For The Government: UNITED STATES ATTORNEY'S OFFICE  
P.O. Box 7198  
100 South Clinton Street  
Syracuse, New York 13261-7198  
BY: TAMARA THOMSON, ESQ.  
GWENDOLYN CARROLL, ESQ.

For Defendant: AARON GOLDSMITH, ESQ.  
(Via Telephone) Attorney at Law  
225 Broadway  
Suite 715  
New York, New York 10007

*Jodi L. Hibbard, RPR, CSR, CRR  
Official United States Court Reporter  
100 South Clinton Street  
Syracuse, New York 13261-7367  
(315) 234-8547*

1 (In Chambers, Mr. Goldsmith present via  
2 telephone, 11:15 a.m.)

3 THE CLERK: Mr. Goldstein -- Goldsmith, I'm sorry.

4 MR. GOLDSMITH: That's okay.

5 THE CLERK: I'm here with the Judge and Tamara  
6 Thomson and the court reporter.

7 MS. THOMSON: Hello.

8 MR. GOLDSMITH: Good morning, everyone.

9 THE COURT: Good morning, how are you today?

10 MR. GOLDSMITH: Doing all right, got one of those  
11 rare days where we got the snowstorm but I think you guys are  
12 clear.

13 THE COURT: Yeah, that's very rare, but trust me, I  
14 think you'd rather be where you are based on the  
15 temperatures.

16 MR. GOLDSMITH: We're already at 20, we're supposed  
17 to be at 10 the next few days.

18 THE COURT: I was driving in this morning, my car  
19 said 1.

20 MR. GOLDSMITH: I think we'd all rather be in  
21 Florida.

22 THE COURT: Yeah. Well, maybe we'll move this  
23 case, what do you think? All right, we'll move down there.  
24 Okay. I just have a list we need to go through, make sure  
25 that we're all set to proceed with the trial in an

1 expeditious manner and we'll do that. So the first thing I'd  
2 like to cover, are there any outstanding discovery issues,  
3 has all the documentation been exchanged, all that sort of  
4 stuff? I'll start with the prosecution and then we'll hear  
5 from you, Mr. Goldsmith.

6 MS. THOMSON: From our end, we're all set. We were  
7 asked to show the evidence to the defendant and we've offered  
8 a couple different dates, I don't know where we stand with  
9 that but the evidence is available for inspection and we're  
10 ready to go.

11 THE COURT: Okay. Mr. Goldsmith?

12 MR. GOLDSMITH: Yeah, that's correct, I've notified  
13 that I just did want to see the originals and I think we'll  
14 be able to arrange that certainly if not beforehand, then  
15 I'll try to get up there, you know, during jury selection  
16 just to take a quick preview, but I'm not concerned about  
17 getting that done and I don't think it will be an impediment  
18 in any way to our proceeding.

19 MS. THOMSON: Just for clarification, and I asked  
20 for this clarification in an e-mail, is it that you wish to  
21 see, to view the original evidence or did you --

22 MR. GOLDSMITH: Yeah.

23 MS. THOMSON: Okay, so you wish to view it. With  
24 regard to looking at any of the electronic evidence, anything  
25 that you want to look at is available for you but we would

1 work off of the image because we don't touch the original, we  
2 work off of the image that was done. So I just want to make  
3 sure you understood that.

4 MR. GOLDSMITH: Yeah, I do.

5 MS. THOMSON: Okay, great.

6 THE COURT: Very well. Then the next thing we want  
7 to talk about is the length of the trial and I'll start again  
8 with the government as far as number of witnesses and what  
9 you anticipate and, you know, length of time to put your case  
10 in.

11 MS. THOMSON: I don't believe there's going to be  
12 any stipulations, so we will have a couple of extra  
13 witnesses, they should be very brief, I think we're at about  
14 17, tops.

15 THE COURT: Seventeen witnesses. And any experts  
16 included in that?

17 MS. THOMSON: We do have one expert that we've  
18 given notice of, that is Brian Braisted, he's the American  
19 agent who did the forensic examination of the computer. I  
20 will let the court know to the extent that it should become  
21 an issue, Kip Wohlert is the Canadian forensic examiner for  
22 this evidence, we have not noticed him as an expert because  
23 we don't expect him to provide expert testimony. His  
24 testimony, his expertise would be as it relates to Canadian  
25 law, he will testify about the actual examination that he

1 did, but we're not seeking any expert opinion from him.

2 THE COURT: Okay. So how many days do you  
3 anticipate in your case?

4 MS. THOMSON: I don't believe it will be more than  
5 four.

6 THE COURT: Four days. Okay. Mr. Goldsmith?

7 MR. GOLDSMITH: Yeah, I have -- I've provided  
8 notice of the two potential character witnesses I may have.  
9 I have no expert witnesses, if the defendant chooses to  
10 testify, I think even with character witnesses, if we decide  
11 to use that, maybe half day.

12 THE COURT: Half a day? Okay, so we can get it  
13 done in a week which is good. Any issues with regard to --  
14 we've already talked about the evidence being available. Any  
15 other issues with regard to exchange of documents, exhibits,  
16 diagrams, anything like that that we need to be concerned  
17 with?

18 MS. THOMSON: Nothing.

19 THE COURT: Nothing, okay. Mr. Goldsmith.

20 MR. GOLDSMITH: The only thing that I have, your  
21 Honor, is I requested by e-mail the government's witness list  
22 because I wasn't able to access it by ECF. That's not  
23 necessarily an issue concerning discovery or documentation  
24 but I would like to have it.

25 MS. THOMSON: We can do that, that's no problem.

1 THE COURT: Okay. All right.

2 THE CLERK: I can check why, he should have access  
3 to that, too.

4 THE COURT: Okay. The next thing is stipulations  
5 and I've just heard the government say they don't anticipate  
6 any stipulations. I would encourage such things as  
7 foundation witnesses and it's a little, you know, I  
8 appreciate the fact that it's a criminal case and, you know,  
9 Mr. Jenkins may want to be trying to preserve as much of his  
10 appellate rights as possible and put the government to their  
11 task, but Mr. Goldsmith, wherever you can, and you have the  
12 consent of your client, where you feel it's appropriate to  
13 save us time when there's real, really no need that you see  
14 to challenge foundational type issues, I encourage you to  
15 talk with the government, the Assistant United States  
16 Attorneys and see if there's any places where you think you  
17 can save us some time. But obviously that's up to you and  
18 your client, but I do encourage you to take a look at that  
19 stuff and see if there's anyplace that you can --

20 MR. GOLDSMITH: Yes, your Honor, I'll certainly be  
21 mindful of that. Ms. Thomson and I have previously discussed  
22 those issues relative to this case before, and while I  
23 certainly want the court to understand that I appreciate the  
24 judicial economy of making stipulations, I do so generally  
25 when they're appropriate, I think in a case like this,

1       foundational witnesses relative to Mr. Jenkins and his  
2       desires are probably not going to end up in a stipulation,  
3       but I will of course keep an open dialogue with the  
4       government as we progress throughout the case and see if we  
5       can help along the duration.

6               THE COURT: Understood. And appreciate whatever  
7       efforts you can do because it just, you know, saves us all  
8       time if you know that there isn't really any real issue or  
9       appropriate challenge to that type of evidence, it saves the  
10      jury time, saves everybody time, so okay. Any questions  
11      about exhibits and how they should be marked and tabbed in a  
12      binder, one for the court and one for the clerk, and, you  
13      know, providing one to opposing counsel, that, that's  
14      expected to be done and be delivered the day we start jury  
15      selection. Any issues with that?

16             MS. THOMSON: The only issue, your Honor, is as  
17      some of our exhibits involve child pornography, at the end of  
18      the day we would just ask that the exhibits, you know, stay  
19      with either the government or the court, so they don't leave  
20      the courtroom.

21             THE COURT: Okay.

22             MS. CARROLL: I think the other thing, your Honor,  
23      is that we're anticipating doing jury binders so that we  
24      don't have to publish the images on the display screens so  
25      we'll also have 14 binders for the jury.

1           THE COURT: Okay. Okay. Well, just as long as  
2 whatever you have prepared for the jury, as long as there's  
3 an understanding that nothing will be displayed until they're  
4 admitted and they should be available for review by defense  
5 counsel prior to getting to that point in the trial when  
6 you're anticipating that testimony, whether you do it the  
7 first day, I know the first day can be very busy but, you  
8 know, at the end of the first day or the second day, whenever  
9 it is, before we get to that point, to make sure  
10 Mr. Goldsmith has an opportunity to review those binders so  
11 he has seen what will be provided to the jury or published to  
12 the jury, okay?

13           MS. THOMSON: Your Honor, we do have a couple of  
14 videos and it's my understanding in other trials, the  
15 equipment has been able to be set up so that the portion that  
16 would normally be seen by the folks who are watching the  
17 trial can be taken out and so we would darken the screens,  
18 the attorney screens and darken the screen that the gallery  
19 would see and so we will attempt to do the same for this  
20 trial, coming up of course with a methodology for the  
21 defendant to be able to, to view it but perhaps not at the  
22 angle where those in the gallery can see the video.

23           THE COURT: Okay. And I anticipate that one of  
24 your tech people are going to be working with you?

25           MS. THOMSON: Yes.



1 THE COURT: Mr. Kittleson?

2 MS. THOMSON: We're anticipating Mr. Kittleson.

3 THE CLERK: Because I have no idea how to do that.  
4 I can block it out from the jury but I can't block it out  
5 from the gallery.

6 THE COURT: And Mr. Goldsmith, you know, obviously  
7 we will make appropriate accommodations so that you and your  
8 client can be viewing anything that is being shown to the  
9 jury at any time, so we'll just -- I'll ask you to be, to  
10 make yourself available and we'll seek your input on how  
11 we're going to do that so we can make sure that you have  
12 access without the public, anybody that might be attending  
13 the trial viewing this material, okay?

14 MR. GOLDSMITH: Very good, your Honor, and I'll  
15 just take one step back to the jury binders, I have no  
16 objection to a jury binder system, and I certainly appreciate  
17 the government's request of the evidence not leaving the  
18 court in the evening, but just as a means of preparation, if  
19 needed, if I could find some opportunity, either U.S.  
20 Attorney's office or in the court to be able to review any  
21 evidence of the following day if I think I need to.

22 THE COURT: Yeah, that's certainly a reasonable  
23 request, and I'm sure that accommodation can be made.

24 MS. THOMSON: It will be.

25 THE COURT: You know, that's not an issue.

1 MR. GOLDSMITH: Thank you.

2 THE COURT: All right. There's no evidence to  
3 anticipate of prior convictions or anything like that?

4 MS. THOMSON: The only thing that could come up is  
5 the defendant when he went to the criminal check which would  
6 be his first real checkpoint after driving through the lane,  
7 he encountered Melany Boyd and Melany Boyd asked the  
8 defendant if he had ever had any arrests, any convictions and  
9 he indicated he did not. The computer was down at that  
10 point, and at some point a couple of hours later the computer  
11 came back up and it did reveal that the defendant did have an  
12 arrest for aggravated harassment in the second degree. So  
13 we're not going to attempt to elicit that specific fact, that  
14 was a factor in their encounter with the defendant in  
15 believing that he was being deceptive, so we'll be careful  
16 about that, but that is a factor.

17 THE COURT: Well, Mr. Goldsmith, you want to be  
18 heard?

19 MR. GOLDSMITH: Yes, your Honor. I think it's  
20 probably most reasonable that if, you know, in terms of  
21 circumstances like this, it be treated like 404(b) material  
22 or prior conviction, certainly would go to credibility, not  
23 going to be able to argue that but I think it's probably  
24 reasonable balance that the court preclude that information  
25 unless Mr. Jenkins were to testify in which case then his

1       credibility would be an appropriate issue for the government  
2       to explore.

3               THE COURT:   There's a number of different ways I  
4       can handle it and it will depend on how the evidence is going  
5       in, whether Mr. Jenkins decides to testify, whether you, as  
6       you've indicated, you know, anticipate possibly calling some  
7       character witnesses, all those things play in, obviously, but  
8       certainly if there's any cross-examination or question about  
9       why Mr. Jenkins may have been held for secondary or further  
10      questioning, that kind of stuff, possibly not, you know, I  
11      would do the balancing act and maybe limit what the arrest  
12      was but the fact that he may have provided inaccurate  
13      information regarding prior involvement with law enforcement,  
14      you know, would be something that would be relevant, and I  
15      may allow, or I would allow them to get into depending on how  
16      this testimony comes out and what the cross-examination is.  
17      So if, just so that everybody is advised of that and aware of  
18      that, that's the way I would proceed and I'll hear you at the  
19      time and I'll do what I believe is the appropriate balancing  
20      that I'm required to do in this area.   Okay.

21             MR. GOLDSMITH:   Very well.

22             THE COURT:   All right.   Okay.   And everybody  
23      understands the preparation of trial briefs, that they should  
24      be prepared and provided.   Is there anything that the  
25      government would like to address or any issues that you think

1 we need to address as far as the expeditious proceedings of  
2 this trial and the way we're going to move through things?  
3 Are there any issues that you see that we need to be aware of  
4 or that we should address?

5 MS. THOMSON: We pretty much spelled out the issues  
6 as we see them in the trial brief. One of the issues would  
7 be the audio recording of the defendant in jail where he's  
8 talking about the existence of child pornography on the media  
9 being less than the government indicates so we intend to  
10 introduce that evidence, we've put that in the trial brief.  
11 We also intend to introduce evidence of the defendant's  
12 internet history, data that was found in unallocated space on  
13 the other computer that he's not charged with but it does  
14 relate to child pornography, it's in our trial brief so we  
15 tried to let the court know those issues.

16 We previously litigated flight as consciousness of  
17 guilt as our intention to put into evidence the fact that he  
18 didn't show up in Canada. I think it helps the jury  
19 understand why we're here and how the case came to be here.  
20 And that was previously opposed and made the subject of  
21 motion, I believe it was docket 41, I put it in my trial  
22 brief, it is our intention to elicit that type of testimony.

23 THE COURT: Okay, Mr. Goldsmith, you want to be  
24 heard?

25 MR. GOLDSMITH: Yes, your Honor. I don't

1 particularly think that it's necessary for a narrative under  
2 what sounds to be described as more of like a 404(b) or  
3 background narrative application by the government, I don't  
4 think that it is particularly probative on his possession or  
5 trafficking of alleged child pornography which are the two  
6 counts in the indictment. If the government is confident in  
7 the evidence that it has, I think that the discussion of a  
8 Canadian -- of him allegedly evading Canadian authorities is  
9 simply going to be more prejudicial than it's probative. If  
10 the government has its case, it can simply rest on the  
11 evidence of him traveling at the border and what the  
12 forensics they believe are going to show. I think that any  
13 evidence that they have discussing evasion is going to  
14 lengthen the case unnecessarily as well.

15 THE COURT: Well, I'm not going to anticipate what  
16 that testimony may be other than what the government's  
17 advised me but, you know, certainly these cases shouldn't be  
18 and can't be tried in a vacuum where information such as this  
19 is not highly prejudicial to the defendant and certainly  
20 isn't going to be any secret that, you know, all, how this  
21 all happened, you know, U.S.-Canadian border, so again, I'll  
22 hear you, you know, I'll expect you to make whatever  
23 objections you want as the testimony is coming in or prior to  
24 the testimony's coming in. I don't want to prejudge anything  
25 at this point until I've heard it, and I'll give you, you

1 know, my ruling at that time. So we'll deal with it as we  
2 get to it. So the important thing is that you're, you know,  
3 you're aware of it, you've been advised and everybody will be  
4 prepared to make their arguments, okay?

5 MR. GOLDSMITH: Thank you, your Honor. While we're  
6 on the topic, I did file electronically yesterday at the  
7 request of my client a request for a so-ordered subpoena for  
8 his Canadian counsel that is only appropriate if the  
9 government pursues this area of evasion. As a proffer to the  
10 government and the court, simply his barrister in Canada  
11 would -- sent him a couple letters describing the warrant  
12 issued without any exigency whatsoever for him to reappear in  
13 Canada and simply discussed really the return of bail to the  
14 barrister to pay off his legal fees. I recognize the  
15 jurisdictional difficulty.

16 THE COURT: I'm glad you do, because that's the  
17 biggest hurdle you have. I mean you can attempt to get this  
18 individual to appear voluntarily, but certainly I'm not going  
19 to sign something that has no legal force or effect. And  
20 which it does not. In Canada.

21 MR. GOLDSMITH: Right.

22 THE COURT: You can sign your subpoena and send it  
23 up there, if he chooses to, you know, make himself available  
24 and come into the jurisdiction to testify, that's completely  
25 up to him, but otherwise, there's all sorts of procedures

1 that need to be followed, to attempt to get a witness from  
2 another country. There's MLAT procedures and there's  
3 treaties and there's all sorts of stuff that, you know, I  
4 just can't help you with. That's something that needs to be  
5 done well in advance and, you know, in anticipation, so I  
6 would -- and it sounds like you're aware, Mr. Goldsmith,  
7 unless this person wants to be cooperative and make himself  
8 available, there's really nothing I can do to assist you.

9 MR. GOLDSMITH: And what I will do just so that  
10 everyone is in the loop, I will notify the government and the  
11 court if I make any headway with this voluntary production of  
12 that witness. If I'm able to make any headway with it, I  
13 will provide copies of the relevant correspondence to the  
14 government immediately, but I'm going to wait to do that work  
15 to prevent unnecessary and extra work on behalf of the court  
16 and the government unless or until I know I've got somebody  
17 who's willing to cooperate.

18 THE COURT: Government want to be heard? No, okay.  
19 Mr. Goldsmith, sounds perfectly appropriate to me, and  
20 that's -- we'll proceed on that basis.

21 MR. GOLDSMITH: Very good.

22 THE COURT: Okay. Jury selection, any questions,  
23 requests, anything? I'll start with the government, as far  
24 as, I mean, I anticipate a standard round method of jury  
25 selection, nothing out of the ordinary, unless there's

1 something that I'm unaware of that you want to make me aware  
2 of.

3 MS. CARROLL: Do you allow back strikes, your  
4 Honor?

5 THE COURT: No.

6 THE CLERK: Are you limiting per round?

7 THE COURT: What do you mean limiting per round?

8 THE CLERK: Doing 4-3-3, 4-2-2, then the fourth  
9 round there's nothing left?

10 THE COURT: Well, I'll hear you, requests with  
11 regard to that?

12 MS. THOMSON: Can we think on it?

13 THE COURT: Yeah.

14 MS. THOMSON: Let you know?

15 THE COURT: Let me know, I'm flexible. I don't  
16 want to waste time, though, I want to be as expeditious as  
17 possible in picking this jury but I'll listen to you before  
18 we get started. Mr. Goldsmith, anything?

19 MR. GOLDSMITH: I have no particular request, I  
20 provided my proposed voir dire. Just being unfamiliar with  
21 your Honor's court just for a quick description of how you  
22 run it because certainly district courts throughout the  
23 country, you run things a bit differently, I want to be  
24 prepared.

25 THE COURT: Yeah. What I'll do is at the start of



1 jury selection, I'll ask you to, as well as the government  
2 attorneys, to introduce yourself to the jury, give you an  
3 opportunity to talk to them a little bit about, you know,  
4 where you're from, what your practice is, that sort of thing,  
5 how long you've been practicing, and I'll do the majority of  
6 the questioning if not all. I will hear you if there's  
7 issues that I haven't covered that you feel should be covered  
8 or if you want to do some questioning. I would just say  
9 this, that I really don't like to waste time, and if  
10 you're -- if you have an area that you think is kind of  
11 unique that you feel is most appropriate for you to ask some  
12 questions, I'll hear you, but I wouldn't anticipate that  
13 you're going to be doing a lot of questioning. If I allow  
14 it, it will be limited. And other than that, I don't know if  
15 you have other questions that you want to ask.

16 MR. GOLDSMITH: Are there -- certain districts have  
17 like an electronic preprinted juror sort of a demographic  
18 questionnaire that will be published to counsel, does the  
19 Northern District adopt that policy?

20 THE COURT: We do. The juror questionnaires will  
21 be provided to you at the start of jury selection, so that  
22 you have them in front of you, and you're expected to, you  
23 know, turn them back into the courtroom deputy as soon as  
24 we're done with them, as we move through jury selection, so  
25 that's the process that we follow. You'll have that

1 information.

2 MR. GOLDSMITH: Very good.

3 THE CLERK: I also ordered extra jurors in this  
4 case in anticipation of maybe going through a few.

5 THE COURT: Okay. And we'll do the regular round  
6 method, you know, moving through it, let you pick, I'm not --  
7 as I've indicated, I won't allow back strikes so you should  
8 use your perempts in that round. So that once we have a  
9 juror sworn, they're sworn and they're going to be there.  
10 Okay?

11 MR. GOLDSMITH: Very good.

12 THE COURT: All right. Oh, I'll give you an idea  
13 of the way I conduct my trials, trial schedule. The first  
14 day jurors usually aren't available until 9:30, but I will  
15 take the bench at 9:00, just so that if there's any  
16 last-minute issues we need to cover on the record, we can do  
17 that. And depending on how long that takes, you know, we'll  
18 either have a jury before we're done or they'll be available  
19 to us shortly thereafter and we'll start with jury selection  
20 as soon as that jury's ready to come downstairs, usually  
21 about 9:30. And the daily schedule is, we'll always start at  
22 9:00, and we'll take an hour for lunch, you know, I look to  
23 break around noon. If there's a witness on that we can  
24 finish in 10, 15 minutes or 20 minutes, we'll finish that  
25 witness and may not break till 12:20, 12:30, whenever it is.

1 Whenever we break we'll have an hour from the time we break  
2 for lunch and then for the afternoon, I usually try to get  
3 the jury out of the courtroom by around 4:30. And again, the  
4 same thing applies, if there's a witness that we can finish  
5 up and we have to go till quarter of 5 or whatever, we'll do  
6 that but you should understand that about, you know, 3:30,  
7 4:00, I'm starting to understand where we are witness wise,  
8 how much longer, don't want to waste time, we're going to  
9 work right up to 4:30, and we'll go longer if necessary but I  
10 look to excuse the jurors and get them on the road by 4:30.  
11 Regular, you know, morning break, afternoon break, and of  
12 course if the jurors, I feel like they need a break or they  
13 need to stand up and move around, we might take one just to  
14 keep them alert, but generally, morning break, afternoon  
15 break, and with those time parameters, starting at 9 and  
16 finishing at 4:30 with an hour for lunch. Okay?

17 MR. GOLDSMITH: Okay.

18 THE COURT: Mr. Goldsmith, the government has  
19 mentioned that they're going to have their courtroom  
20 technology person available to assist them in doing what they  
21 need to do video wise and evidence presentation. Do you  
22 anticipate any courtroom technology that you're going to  
23 need?

24 MR. GOLDSMITH: I do not anticipate any courtroom  
25 technology at this point, and I'm sure that if I need a

1 little extra help referring to one of their exhibits, they'll  
2 help me pull it up.

3 THE COURT: Yeah, the government's always been very  
4 good and they have -- well, if they have Mr. Kittleson, he's  
5 great, I've had him in other trials and very accommodating as  
6 far as making sure that whatever they've used on their direct  
7 is available to you and he'll assist you in getting up  
8 whatever you need, so -- but I didn't know if there was  
9 anything that evidentiary wise that you had that you say, you  
10 know, I'm going to need this or this, some other piece of  
11 equipment to present, but it doesn't sound like that.

12 MR. GOLDSMITH: No, your Honor, and to the ends of  
13 technology, will the court require that I have an order from  
14 the court permitting me to bring my laptop in?

15 THE COURT: You can bring your laptop in, you don't  
16 need an order for you to do that. You can bring it in and  
17 there's, you can check with -- Lori will show you how to,  
18 there is a method to hook it up, right?

19 THE CLERK: If he wants to display something.

20 THE COURT: If you want to display something, but  
21 other than that, you can have it at counsel's table and have  
22 access to it to use it.

23 THE CLERK: But we don't have internet access, just  
24 so you know.

25 MR. GOLDSMITH: I guess that's appropriate.

1 THE COURT: Okay.

2 MR. GOLDSMITH: Okay. Your Honor, I did have one  
3 final issue. My client did want me to revisit filing a  
4 motion regarding impropriety of the treaty and the joint  
5 investigation, more specifically, transfer of the case from  
6 the Canadian authorities to the United States authorities. I  
7 believe the motion had been filed previously by him on pro se  
8 basis if not with the prior counsel, I wanted to verify that  
9 with the court before I even sought leave to file.

10 THE COURT: Um, I believe -- it's been awhile since  
11 I've looked at this stuff, but I think we've addressed it at  
12 least once, maybe more than once.

13 MR. GOLDSMITH: Yeah.

14 THE COURT: So that, you know, whatever the ruling  
15 is, there isn't going to be any change, let's put it that  
16 way.

17 MR. GOLDSMITH: Okay, very good.

18 THE COURT: It's very clear in the court's view as  
19 to what those issues are and that it's been addressed and  
20 it's been addressed appropriately, so unless there's some new  
21 evidence or some new wrinkle, Mr. Goldsmith, I would say, you  
22 know, I wouldn't waste your time, I would focus on the issues  
23 at trial that you need to focus on. And again, if there's  
24 some new wrinkle or something different that the court hasn't  
25 seen, fine, but if it's the same old motion or same issue,

1     that's been addressed, I'd say, you know, don't waste your  
2     time.

3             MR. GOLDSMITH: Very good.

4             THE COURT: Okay. Anything else?

5             MS. CARROLL: Your Honor, the only other thing is  
6     the issue of forfeiture which the government discussed  
7     briefly in its trial memo. As the court and Mr. Goldsmith  
8     are aware, the forfeiture allegation names the digital media  
9     that the defendant is alleged to have possessed child  
10    pornography using. Mr. Goldsmith, I don't know if you have a  
11    position regarding whether you want, if there's a conviction,  
12    if you want the jury to hear the forfeiture issue or if your  
13    client, in the event of conviction, will be willing to have  
14    that be a bench determination, but that might be something  
15    that would save some judicial resources if we can agree on  
16    judicial determination rather than jury determination on the  
17    forfeitability of the property.

18            MR. GOLDSMITH: Well, my position is that I  
19    actually, a little over a year ago was trying a case in  
20    District Court in Southern Ohio when several rulings had come  
21    out in circuits around the country on this issue and we sort  
22    of briefed it all out and made a determination that a jury  
23    finding on the special verdict was required unless  
24    specifically waived by a defendant, so what I've done in  
25    other trials is just gone forward with the special finding by

1 the jury, only because I -- while it certainly takes a little  
2 bit more time, my experience is that they are very swift,  
3 there's really typically only one witness that's relevant to  
4 it, and that testimony is accomplished very quickly and if  
5 under those circumstances the jury has already found a  
6 finding of guilt, they are pretty quick to make a  
7 determination as to any forfeiture.

8 MS. CARROLL: Okay.

9 THE COURT: Has there been submissions with regard  
10 to this?

11 MS. CARROLL: There's reference in the trial memo  
12 to the fact that, yes, a waiver by the defendant is required  
13 or a jury determination so I --

14 THE COURT: Sounds like you're not going to get a  
15 waiver.

16 MS. CARROLL: Sounds like there's not going to be a  
17 waiver, that was really my question.

18 THE COURT: Okay. So that's -- you know what you  
19 have to do. Okay. Anything else?

20 MR. GOLDSMITH: Just on a personal note, your  
21 Honor, I note in the court's decision for the motion that I  
22 filed for the suppression of evidence seized at the border  
23 that it was certainly not my intent to be unduly litigious  
24 and repetitive in the litigation. My particular reading,  
25 apparently I read it wrong, was that there was leave to

1 refile the motion, certainly wouldn't want to, not being a  
2 regular attorney before the court, have the court believe  
3 that I was just sort of litigating for the sake of  
4 litigating.

5 THE COURT: I appreciate your comment on that, and  
6 we're all set, we're just going to move ahead.

7 MR. GOLDSMITH: Very good.

8 THE COURT: Okay. All right. Stay warm, travel  
9 safe, and we'll see you soon.

10 MR. GOLDSMITH: Very good.

11 THE COURT: Okay, thank you.

12 MS. THOMSON: Thank you.

13 (Proceedings Adjourned, 11:45 a.m.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official  
Realtime Court Reporter, in and for the United States  
District Court for the Northern District of New York, DO  
HEREBY CERTIFY that pursuant to Section 753, Title 28, United  
States Code, that the foregoing is a true and correct  
transcript of the stenographically reported proceedings held  
in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the Judicial  
Conference of the United States.

Dated this 23rd day of May, 2014.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR  
Official U.S. Court Reporter